APPENDIX A

General Statutes of Connecticut Revision of 1949:

Sec. 1800. Appeal from Board of Tax Review. Any person claiming to be aggrieved by the action of the board of tax review in any town or city may, within two months from the time of such action, make application in the nature of an appeal therefrom, to the court of common pleas of the county in which such town or city is situated, which shall be accompanied by a citation to such town or city to appear before said court. Such citation shall be signed by the same authority and such appeal shall be returnable at the same time and served and returned in the same manner as is required in case of a summons in a civil action. The authority issuing the citation shall take from the applicant a bond or recognizance to such town or city, with surety, to prosecute the application to effect and to comply with and conform to the orders and decrees of the court in the premises. Any such application shall be a preferred case, to be heard, unless good cause appear to the contrary, at the first session, by the court or by a committee appointed by the court, and the pendency of such application shall not suspend an action by such town or city to collect not more than seventy-five per cent of the tax so assessed and upon which such appeal is taken. The court shall have power to grant such relief as shall to justice and equity appertain, upon such terms and in such manner and form as appears equitable, and, if the application shall appear to have been made without probable cause, may tax double or triple costs, as the case appears to demand; and, upon all such application, costs may be taxed at the discretion of the court. If the assessment made by the board of tax review is reduced by said court, the applicant shall be reimbursed by the town or city for any overpayment of taxes. Upon motion, said court shall, in event of such overpayment, enter judgment in favor of such applicant and against such city or town for

the whole amount of such overpayment, together with interest and costs.

SEC. 1801. REMEDY WHEN PROPERTY WRONGFULLY ASSESSED. When it is claimed that a tax has been laid on property not taxable in the town or city in whose tax list such property was set, or that a tax laid on property was computed on an assessment which, under all the circumstances, was manifestly excessive and could not have been arrived at except by disregarding the provisions of the statutes for determining the valuation of such property, the owner thereof, prior to the payment of such tax, may, in addition to the other remedies provided by law, make application for relief to the court of common pleas of the county in which such town or city is situated. Such application may be made within one year from the date as of which the property was last evaluated for purposes of taxation and shall be served and returned in the same manner as is required in the case of a summons in a civil action, and the pendency of such application shall not suspend action upon the tax against the applicant. In all such actions, the court of common pleas shall have power to grant such relief upon such terms and in such manner and form as to justice and equity appertain, and costs may be taxed at the discretion of the court. If such assessment shall be reduced by said court, the applicant shall be reimbursed by the town or city for any over payment of taxes in accordance with the judgment of said court.

PUBLIC ACTS OF THE STATE OF CONNECTICUT,
JANUARY SESSION, 1957

PUBLIC ACT NO. 673

AN ACT CONCERNING LOCAL PROPERTY TAX ASSESSMENTS.

Section 1. In all cases in which the assessors or boards of tax review of any municipality, as the term "municipality" is defined in section 1823 of the general statutes, have assessed any estate for purposes of the ad valorem property tax at a fraction of the then true and actual value of such estate; and in all cases in which the assessors or boards of tax review of any such municipality have assessed real property at a different percentage of its then true and actual value then the percentage of the then true and actual value at which they have assessed personal property, all procedures followed and all action taken with respect thereto by said assessors and boards of tax review are validated and shall be legal and binding as though such procedures followed and such action taken were in accordance with law; and the assessment lists containing any such property, assessed in such manner, and the votes imposing taxes thereon shall not for such causes be adjudged void or, defective, but the same are validated and made binding upon the municipality where the same were made; and all taxes which have been or shall be laid on the assessment list completed or to be completed prior to the effective date of this act and imposed according to such assessment list may be levied and collected. All rights of appeal as set forth in section 1800 and section 1801 of the general statutes shall apply to this act whether appeals are now pending or to be brought and the court shall multiply the then true and actual value as determined by said court of the property which is the subject of appeal by any percentage or fraction used by the municipality in determining whether or not relief should be granted in such appeal.

APPENDIX B

SUPREME COURT OF ERRORS

MARCH TERM, 1959

146 Connecticut 403

THE E. INGRAHAM COMPANY v. TOWN AND CITY OF BRISTOL

Application for relief against the wrongful assessment of taxes upon personal property, brought to the Court of Common Pleas in Hartford County and reserved by the court, *Barber, J.*, for the advice of this court.

Joseph M. Donovan and *Wallace Barnes*, with whom were *Sherwood L. Anderson III* and, on the brief, *Frederick W. Beach* and *George T. Calder*, for the plaintiff.

Neil F. Murphy, with whom, on the brief, was *Louis F. Hanrahan*, corporation counsel, for the defendant.

KING, J. In May, 1956, the plaintiff instituted this proceeding in four counts. It has agreed that all but the second and fourth counts may be treated as abandoned. The defendant demurred to the prayers for relief. Apparently before any determination of the demurrer, the parties entered into a stipulation for a reservation of certain questions. It is this reservation which is now before us. The basic facts are relatively simple. The plaintiff, a manufacturer, on October 1, 1955, owned real and personal property, all liable to taxation in Bristol. The real property was assessed at 50 per cent of its actual value, the personal property other than motor vehicles at 90 per cent, and the motor vehicles at 100 per cent. These percentages were applied uniformly in the assessment of all property in Bristol. Of course, the millage rate on all assessments was uniform for the tax year in question. There is no claim that the amount taken as the actual value of any of the plaintiff's property was excessive. Indeed, the amount

taken as the actual value of the personal property other than motor vehicles was the plaintiff's own valuation.

The plaintiff claims that all of its property, both real and personal, should have been assessed at a single uniform percentage of its actual value, that it owned more than twice as much personal property as real property, and that since all personal property in Bristol, including that of the plaintiff, was assessed at a higher percentage of its actual value than was real property, the plaintiff was indirectly required to pay a higher percentage of the total taxes raised in Bristol for the year in question than it would have had to pay had personal property not been assessed at a higher percentage of actual value than was real property.

The plaintiff instituted a similar proceeding based on the assessment of October 1, 1954. In a decision rendered May 17, 1957, this court held that under the then controlling statutes[1] assessors had to assess real and personal property at its actual value. *E. Ingraham Co.* v. *Bristol*, 144 Conn. 374, 377, 132 A.2d 563. It should be noted that in the present proceeding the plaintiff does not seek a legal assessment of its property, that is, an assessment at actual value. Nor did it in the former proceeding. Admittedly, all of the plaintiff's property, except its motor vehicles, was assessed in 1954 and in 1955 at less than actual value. In its brief it claims "reimbursement by the Town of Bristol for overpayment of taxes."

[1] To avoid confusion it perhaps should be pointed out that subsequent to that decision the General Assembly, at its 1957 session, enacted what is now § 12-64 of the Revision of 1958, changing the law to provide that all taxable real and personal property "shall be liable to taxation at a uniform percentage of its present true and actual valuation, not exceeding one hundred per cent of such valuation." It is not claimed that this litigation had any effect on the instant case, which involves an assessment made as of October 1, 1955.

While this court held the 1954 assessment, except as to motor vehicles, illegal, it further held that the plaintiff was entitled to no relief since as a result of the illegality all of the plaintiff's property except motor vehicles was assessed at less than it should have been under the controlling statutes and any reduction would violate the assessment statutes even more than the board of assessors had already done by assessing property at fractions of actual value. *E. Ingraham Co.* v. *Bristol*, supra, 382. The plaintiff seeks to avoid the result of that case by claiming that the present proceeding, unlike the former case, is not an appeal from the doings of the board of tax review under what is now § 12-118 of the 1958 Revision (Rev. 1949, § 1800), but is an application to the Court of Common Pleas for relief under § 12-119 (Rev. 1949, § 1801). The defendant claims the present proceeding is solely an appeal from the board of tax review under § 112-118 and that under the rule of *E. Ingraham Co.* v. *Bristol*, supra, no relief can be granted. In the view which we take it is unnecessary to determine this question and we assume, without in any way deciding, that the complaint is adequate to invoke the provisions of § 12-119.

The plaintiff's right to relief under § 12-119 must be determined from an analysis of the statute in the light of the plaintiff's claims and the stipulated facts. The statute is "directed to relief against the collection of an illegal tax. The proper judgment is not, as in the case of an appeal from action of a board of . . . [tax review under § 12-118], that the valuations in the grand list be changed . . . but that the tax sought to be collected is, in whole or in part, not justly due. The grand list remains unaffected but the tax, or some part of it, based on the list, cannot be collected." *State ex rel. Waterbury Corrugated Container Co.* v. *Kilduff*, 128 Conn. 647, 649, 25 A.2d 62; *Fenwick* v. *Old Saybrook*, 133 Conn. 22, 24, 47 A.2d 849; *First National Bank & Trust Co.* v. *West Haven*, 135 Conn. 191, 194 n., 62 A.2d 671. It is important, however, to note that the pre-

requisite to relief under the statute is an illegality in the assessment of the applicant's property, or at least of property which he owned at the date of the institution of the action. *General Realty Improvement Co.* v. *New Haven*, 133 Conn. 238, 241, 50 A.2d 59.

"The statute in question does not act in any way as . . . an appeal [from the board of tax review]. It provides another and different method of attacking the validity of an assessment upon two different grounds included in its provisions, and upon those only. We have held heretofore that the remedy by appeal from the action of a board of . . . [tax review under § 12-118 of the 1958 Revision] is not exclusive, and that the tax may be paid and an action brought to recover it as money illegally received and retained, and that in extreme cases an injunction may be granted restraining the collection of the tax. . . . To these recognized remedies the statute . . . [§ 12-119] merely added one more, and this added remedy was, properly speaking, merely declaratory of existing and equitable rights; for . . . relief outside of that obtainable by appeal [from the board of tax review] would have been afforded as respects the two categories mentioned in the . . . statute . . . ." *Connecticut Light & Power Co.* v. *Oxford*, 101 Conn. 383, 391, 126 A. 1. Whether, in all situations where it is applicable, the statute precludes resort to an equity action we need not now determine. *Cohn* v. *Hartford*, 130 Conn. 699, 704, 37 A.2d 237.

The first category in the statute embraces situations where a tax has been laid on property not taxable in the municipality where it is situated, as in cases such as *Fenwick* v. *Old Saybrook*, supra; *First National Bank & Trust Co.* v. *West Haven*, supra, 192; and *Bridgeport* v. *Stratford*, 142 Conn. 634, 636, 116 A.2d 508. Here it usually, if not invariably, furnishes a remedy alternative to an appeal from the board of tax review under § 12-118. See cases such as *Pomfret School* v. *Pomfret*, 105 Conn. 456,

457, 136 A. 88; and *Arnold College* v. *Milford*, 144 Conn. 206, 207, 128 A.2d 537. With this category we have no immediate concern in this case.

The second category, under which the plaintiff claims to be proceeding, embraces situations where it is claimed that, in the words of the statute, "a tax laid on property was computed on an assessment which, under all the circumstances, was manifestly excessive and could not have been arrived at except by disregarding the provisions of the statutes for determining the valuation of such property." Here the statute does not afford a procedure in all respects alternative to that given by an appeal from the board of tax review under § 12-118. Mere over-valuation, without more, in an assessment of property is not enough to make out a case under § 12-119, and for this the exclusive remedy is still an appeal from the board of tax review under § 12-118. *Cohn* v. *Hartford*, supra, 703; *Cooley Chevrolet Co.* v. *West Haven*, 146 Conn. 165, 166, 148 A.2d 327. To bring an assessment under the second category of § 12-119, it must be (a) manifestly excessive and (b) one which could not have been arrived at except by disregarding the provisions of the statutes for determining the valuation of the property. *Lomas & Nettleton Co.* v. *Waterbury*, 122 Conn. 228, 230, 188 A. 433; *Cohn* v. *Hartford*, supra; *Mead* v. *Greenwich*, 131 Conn. 273, 276, 38 A.2d 795. Parenthetically, it may be noted that after the decision in *E. Ingraham Co.* v. *Bristol*, 144 Conn. 374, 132 A.2d 563, the General Assembly, in § 1 of No. 673 of the 1957 Public Acts, purported to validate assessments in municipalities where real or personal property had been assessed at a percentage of its actual value instead of at its full actual value. The plaintiff claims that the section is unconstitutional as an invalid attempt to validate an illegal assessment retroactively. Under our view of this case, it is unnecessary to consider, and we do not give consideration to, this validating statute.

There can be no doubt that the plaintiff has brought itself within the second of the two prerequisites for relief under the second category of § 12-119 in that the assessment of its real and personal property, except for its motor vehicles, was illegal and could have been, and indeed was, arrived at only by disregarding the provisions of the law requiring that its property be assessed at its actual value as distinguished from any fraction of that value. *E. Ingraham Co.* v. *Bristol*, supra, 377. But it is equally obvious that the plaintiff has failed to bring itself within the first prerequisite. By showing that an illegal assessment threw a disproportionate share of the total tax liability in Bristol upon it, the plaintiff did not establish that the assessment on its personal property was "manifestly excessive." On the contrary, the assessment was obviously too low in that it was admittedly fixed at only a fractional part of the actual value. It follows that the plaintiff has failed to show itself entitled to relief under § 12-119, under which, alone, it claims to be proceeding, and that the answer to the first question in this reservation—whether the plaintiff is entitled to relief under § 12-119—should be in the negative. This conclusion disposes of this application adversely to the plaintiff and makes unnecessary any consideration of the other questions asked in the reservation.

To the first question in the reservation as amended, we answer "No"; the remaining questions are not answered.

No costs will be taxed in this court to either party.

In this opinion the other judges concurred.

APPENDIX C

THE E. INGRAHAM COMPANY v. TOWN AND CITY OF BRISTOL
144 Conn. 374

Argued April 16—decided May 17, 1957

Application in the nature of an appeal from the action of the board of tax review of the town and city of Bristol in refusing to reduce the valuation of personal property owned by the plaintiff, brought to the Court of Common Pleas in Hartford County and reserved by the court, *Healey, J.*, for the advice of this court.

The plaintiff filed a motion for reargument which was denied.

Frederick W. Beach and *Wallace Barnes*, with whom, on the brief, were *Joseph M. Donovan*, *George T. Calder* and *Walter F. Torrance, Jr.*, for the plaintiff.

Neil E. Murphy, with whom were *Harry F. Pergoda* and, on the brief, *Louis F. Hanrahan*, corporation counsel, for the defendant.

O'SULLIVAN, C. J. The stipulated facts essential to this reservation are these: On October 1, 1954, the plaintiff, a manufacturing concern was the owner of real estate and personalty located in the town of Bristol. The personalty consisted of machinery, raw materials, goods in process, finished products and motor vehicles. The assessors determined that the actual value of the plaintiff's real and personal property on October 1, 1954, was $2,496,460 and $6,149,672, respectively. The assessors further determined that all of the taxable real estate in Bristol had, as of the same date, an actual value of $145,650,350, and the personalty an actual value of $48,382,958, or a total of $194,033,278. The assessors then set in the tax list of that year the plaintiff's real estate at $1,248,230; its personalty other than motor vehicles at $5,501,770; and

its motor vehicles at $6600; the three amounts being 50 per cent, 90 per cent and 100 per cent, respectively of the actual values previously determined. These listings made a total assessment against the plaintiff of $6,756,600.

Using comparable methods and percentages, the assessors set in the tax list all of the taxable realty within the town at $72,825,160; all of the taxable personalty other than motor vehicles at $33,755,930; and all of the motor vehicles at $10,876,370. After legal exemptions of $3,951,220 had been applied to these three classifications and after minor adjustments had been made on the application of property owners not parties to this action, the grand list totaled $113,314,360.

The sum of $8,616,132, the actual value of all of the plaintiff's property as determined by the assessors, was 4.447 per cent of the actual value of all the taxable property in the town. The sum of $6,756,600, the assessed value of all the plaintiff's property, was 5.962 per cent of the grand list of the town.

Within the time prescribed by law, the plaintiff appealed to the board of tax review for a reduction in the assessment of its personalty, but the appeal was dismissed. Thereupon the plaintiff instituted this proceeding, which has been briefed and argued as an application in the nature of an appeal to the Court of Common Pleas under General Statutes § 1800, and we so construe it. The parties having stipulated in the Court of Common Pleas as to the foregoing facts, the case has been reserved for advice upon the four questions.[1] Essentially, these questions pre-

[1] "1. Did the Assessors and the Board of Tax Review of the town of Bristol err in determining that all the Plaintiff's real and personal property should be assessed and set in the Grand List of October 1, 1954, at 5.962% of the assessed value of all taxable property in the town when the true and actual value of said property as determined by them was only 4.447% of the true and

sent the single issue whether or not the assessors can, by using a higher percentage of the actual value of personalty than they do of real estate in making assessments, impose upon the plaintiff the obligation of paying a greater proportionate amount of taxes than those assessed, let us say, for only real estate.

The assessing of property at a fraction of its actual value undoubtedly is so widespread that most, if not all of the municipalities in the state pursue the practice. This rule of assessment has been tolerated for so long a time that it has acquired the respectability of assumed legality. The practice, however, is clearly improper. Section 1738 of the General Statutes provides that taxable realty "shall be liable to taxation at its present true and actual valuation," and § 1047d of the 1955 Cumulative Supplement provides that all items of taxable personalty shall be set in the list of the owner "at their then actual valuation." Since a municipality has no authority to tax except as

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actual value of all taxable property in the town as determined by them?

"2. Did the Assessors and the Board of Tax Review of the town of Bristol err in setting the Plaintiff's personal property, other than its motor vehicles, [in] said Grand List at 90% of its true and actual value as determined by them and by setting its motor vehicles [in the] Grand List at 100% of their true and actual value as determined by them, when all of the taxable real property located in the town was set [in] said list at only 50% of its true and actual value as determined by them?

"3. Did the Defendant Board err in refusing to reduce the assessment of all Plaintiff's personal property at 50% of its true and actual value?

"4. Did the [defendant] Board err in refusing to correct the assessment of all Plaintiff's real and personal property [in] said list so that it would be 4.447% of the assessed value of all the taxable real and personal property in the town, when the true and actual value of all Plaintiff's real and personal property was only 4.447% of the true and actual value of all the taxable real and personal property located in the town?"

granted by the General Assembly, statute conferring authority to tax must be strictly observed. *Thames Mfg. Co. v. Lathrop*, 7 Conn. 550, 556. The unambiguous language of the two statutes just mentioned gives assessors no warrant to utilize as a tax base any value other than the actual value of the property. Indeed, the language impliedly forbids the adoption of any different base.

The impropriety of fractional valuation is manifest from the history of §§ 1738 and 1047d. Prior to 1860, the General Assembly specifically authorized assessments of real estate and personalty at percentages of their valuation. For example, in 1821 the statute provided that "[d]wellinghouses, with the buildings and lots appurtenant thereunto . . . shall be valued at the rate which each separate dwellinghouse and lot, with the appurtenances thereof, are worth in money, and . . . shall be set in the list of the owner, at two per cent of such value. Lands and separate lots . . . shall be valued and assessed by the acre . . . and shall be set in the list, at three per cent of such value. . . . All horses, asses and mules, one year old, or more, shall be valued and set in the list at ten per cent of such value. . . . Neat cattle one year old, or more, shall be valued, and set in the list, at six per cent of such value. Silver plate, except spoons, . . . shall be valued, and set in the list, at twenty-five per cent of such value. Clocks, watches and time-pieces shall be valued, and set in the list, at fifty per cent of such value." Statutes, 1821, p. 446, § 2. This legislative policy of requiring the assessment of property at fractional valuation remained in effect for forty years more, although the percentages were changed from time to time and eventually were stabilized at 3 per cent for both personalty and realty.[2]

In 1860, the General Assembly passed an act reciting "[t]hat all property on which, by the laws of this state,

[2] For comparable succeeding statutes see Statutes, 1824, p. 402, § 2; Statutes, 1838, p. 597, § 2; Statutes, 1849, p. 604, § 14 et seq.; Statutes, 1854, p. 839, §§ 7, 8.

taxes may be laid, shall be set in the list at its actual valuation, and not as heretofore at three per cent. of such valuation." Public Acts 1860, c. 15, § 1. The assembly thus abandoned, in the clearest sort of manner, the previous method of fractional valuation and directed the rule of assessment to be the actual value of the taxable property. This important change in legislative policy was continued and is to be noted in the Revisions of 1866 and 1875. Rev. 1866, p. 708 § 7, p. 709 § 8; Rev. 1875, p. 155 § 13; p. 156 § 14. The direction found in the two sections of the latter citation is to set real estate at its "true and actual valuation" and personalty at its "actual valuation." It should be stated, parenthetically, that the expressions "true and actual valuation" and "actual valuation" mean the same thing, and they are also synonymous with "market value," "market price" and "fair value." *Sibley* v. *Middlefield*, 143 Conn. 100, 106, 120 A.2d 77. The sections in the Revision of 1875 were continued in almost identical form, and appear in the 1949 Revision as §§ 1738 and 1745.[3] The latter section was amended in 1953 (Cum. Sup. 1953, § 848c) in a particular not material to this case and is now § 1047d. Thus, the history of the statutes discloses the unequivocal legislative intent, as expressed in the public act of 1860 and followed ever since, that all taxable property "shall be set in the list at its

[3] The language of the 1875 Revision appeared in the Revision of 1888, §§ 3827-3829, and in the Revision of 1902, §§ 2322-2324, except for the addition of barges and registered vessels to the list of taxable personal property. The language underwent very minor changes in the Revision of 1918, §§ 1183-1185, and in the Revision of 1930, §§ 1143, 1147, 1150, with the exception that § 1134 of the 1918 Revision was added at the end of § 1143 of the 1930 Revision and the provisions of chapters 162 and 204 of the Public Acts of 1923 were added to § 1147 of the 1930 Revision. Sections 1143 and 1147 of the 1930 Revision appear unchanged in the Revision of 1949, §§ 1738, 1745, except for a minor change in the order of words in § 1738 created by § 364c of the 1935 Cumulative Supplement.

actual valuation, and not as heretofore at [a] per cent. of such valuation."

Nor can we overlook a further matter in demonstrating the impropriety of pursuing the rule of fractional valuation. When assessors adopt such a rule, they indirectly assume a role which rightfully is not theirs to play. For, if such a rule is applied, the grand list will obviously be smaller in amount than it would be if the mandate of the statute were carried out. Under such circumstances, the borrowing power of the municipality is affected, since its indebtedness may not exceed specified percentages of the grand list. Cum. Sup. 1955, § 363d, as amended, Nov. 1955 Sup., §§ X8, X119. Assessors who use fractional valuation to determine their assessments therefore interfere, perhaps unwittingly but nonetheless effectively, with a power which legally belongs to others.

It is apparent, then, that the Bristol assessors acted contrary to the statutes, and hence illegally, in listing the plaintiff's real estate at 50 per cent of its actual value and the personalty, other than motor vehicles, at 90 per cent of that value. *Slosberg* v. *Norwich*, 115 Conn. 578, 162 A. 772; *Dennis' Appeal*, 72 Conn. 369, 372, 44 A. 545; *Ives* v. *Goshen*, 63 Conn. 79, 82, 26 A. 845; *White* v. *Portland*, 63 Conn. 18, 22, 26 A. 342. It does not, however necessarily follow that the plaintiff is entitled to relief.

Section 1800 of the General Statutes provides for such an appeal as was taken in the case at bar to the Court of Common Pleas from the action of the board of tax review in denying the plaintiff the relief it sought from the doings of the Bristol assessors.[4] The court is em-

[4] "Sec. 1800. APPEAL FROM BOARD OF TAX REVIEW. Any person claiming to be aggrieved by the action of the board of tax review in any town or city may . . . make application, in the nature of an appeal therefrom, to the court of common pleas . . . . The court shall have power to grant such relief as shall to justice and equity appertain, upon such terms and in such manner and form as shall appear equitable . . . ."

powered by statute "to grant such relief as shall to justice and equity appertain." Some sixty odd years ago this court handed down an opinion in *Randell* v. *Bridgeport*, 63 Conn. 321, 28 A. 523. A summary of the facts in that case is this: It was the uniform rule of the Bridgeport board of assessors to assess taxable property at half its actual value. This was contrary to the statutes, which required assessments to be made at actual value. Rev. 1888, §§ 3827, 3831. In 1891, the board assessed the plaintiff's real estate at a figure in excess of such half. Failing to obtain relief from the board of relief, the plaintiffs appealed to the court. The statute then in effect provided, like the applicable present statute, that the "court shall have power to grant such relief as shall to justice and equity appertain." Rev. 1888, § 3863. We said (p. 323): "There are two ways in which a taxpayer may be wronged in levying taxes. An assessment may conform to the statute generally and the individual may be assessed in excess of the statutory requirement. A wrong of that description is easily redressed. But when the town disregards the statute and establishes a rule of its own assessing the property at one half of its actual value, and then assesses an individual at the full value of the property, while the injury is the same the application of the remedy becomes more complicated. Practically the only way to redress the wrong is to reduce the assessment; and that makes the court seem to disregard the statute; while if the wrong is not redressed there is a denial of justice; and the court practically ignores the statute giving an aggrieved party an appeal, and practically ignores the statute which provides that 'said court shall have power to grant such relief as shall to justice and equity appertain.' . . . Thus we are in a dilemma. If we choose one horn of it a public statute is violated—not so much by the court as by the town—but by an apparent aproval of the court as to one individual; and that by an express command of another statute, and by the dictates of justice. If we take the other horn the court itself violates a remedial,

statute, and becomes in a measure a party to the wrong doing. Under the circumstances we do not hesitate to choose the former, and to redress the wrong." In other words we held that, although a judicial reduction of an assessment of property below its actual value was accomplishing what the statute forbade, the reduction was legally warranted under the language "[the] court shall have power to grant such relief as shall to justice and equity appertain."

The language quoted from § 1800 appears to give to the court broad equitable powers to adjust inequalities in the assessment of property for purposes of taxation. We cannot, however, construe it as expressing a legislative intent to confer upon the court the power to adjust inequalities in the assessed values of property when those values have been reached by applying a percentage of less than 100 per cent of the actual values of the property assessed, in direct violation of the mandate contained in §§ 1738 and 1047d. To make such an adjustment would necessarily result in the court's fixing a value below that prescribed by the statutes. Notwithstanding our recognition in the *Randell* case, supra, that the statutes required the assessors to place property in the tax list at 100 per cent of its actual value, we granted the plaintiffs in that case relief by fixing a valuation at less than 100 per cent of such value. The view which we take in the instant case is contrary to this, and the *Randell* case must therefore be overruled.

We are unable to give categorical answers to the questions propounded. We can answer only generally by stating that the assessors acted contrary to law in assessing the plaintiff's property, save the motor vehicles, and that the board of tax review did not act illegally in refusing the plaintiff's request for reduction of the assessments of its personalty.

No costs will be taxed in this court to either party.

In this opinion the other judges concurred.